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SA Overview^D - Germany

Contractor Accreditation Process-- Germany

Articles 72 & 73 of the NATO SOFA SA

DoD Contractor Personnel Office (DOCPER)

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<http://www.eur.army.mil/g1/content/CPD/docper.html>

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- Status accreditation background and overview
- COR duties and responsibilities
- Specific Issues
 - Contract Notification/Information and Application packages
 - DCOPS -DOCPER Contractor Online Processing System
 - DD 1172-2s
 - “New” contracts
 - Military Exigency
 - Temporary duty in Germany
 - Subcontractors
 - Ordinarily Resident
 - Yellow-Card Approvals
 - Integrity
- Questions??

Contractor SOFA Status

- Status Accreditation Benefits the Contracted Employee
 - Provides status to qualifying DoD contractors as part of the civilian component
 - Income is exempt from German taxes
 - Provides for individual logistics support (e.g., PX/Commissary, driver's license, fuel card, MWR)
- Status Accreditation Benefits the Government
 - Saves the US gov't money on contracts
 - Increases US gov't contractors' ability to acquire and retain high quality employees

History of SOFA Status

- Prior to 1998, US gov't had unilateral right to grant SOFA status
- US gov't "liberally interpreted" the SOFA provisions, granting status to those in positions and/or to individuals that did not qualify
- March 1998, US and Germany signed an agreement on the bilateral implementation of the Supplementary Agreement (Art 72 & 73) to the SOFA. The result was a 2-phase process:
 - Phase 1: contract packages reviewed and approved or denied
 - Phase 2: individual applicant packages reviewed and approved or denied

History of ^DDOCPER

- The DoD Contractor Personnel (DOCPER) office was authorized by the Director of Defense Procurement in order to implement the agreement for all US DoD agencies operating in Germany
- DOCPER is located at Tomkins Barracks in Schwetzingen, GE
- As the DoD Proponent Agency for status accreditation in Germany, DOCPER is the one-stop-shop for all contractor status accreditation issues
- Web site: <http://www.eur.army.mil/g1/content/CPD/docper.html>
 - AE Reg 715-9
 - FAQs (Frequently Asked Questions)
 - Informative presentations
 - Wealth of other status-related info
- AE Reg 715-9 contains most information needed regarding status accreditation under Articles 72 and 73

Types of Status^D

- Technical Expert (TE): accomplishes complex tasks of a technical-military or technical-scientific nature
- Analytical Support (AS): military planning and intelligence analysis
- Troop Care (TC): provides care to members of the force (doctors, nurses, physical therapists, social workers, and military career counselors)
- Troop Care Information Technology (TC-IT): IT support to TC missions

Exchange of Notes: Article 72 & 73

- Article 72 (AS, TC, TC-IT)
 - Phase 1 approval comes from the German Foreign Office (GFO)
 - Phase 1 approval focuses on the company in relation to a specific contract and establishes approval via a Note Verbale (NV)
 - NV process is very formal and structured
 - Jobs must be mapped to pre-approved position descriptions (AS or TC-IT) or job titles (TC)
- Article 73 (TE)
 - Phase 1 approval comes from respective Laender authorities
 - Phase 1 approval focuses on the contract and the job positions
 - Positions must be of a highly technical or scientific nature dealing with equipment and require a

Time Frames^D for Decisions

- Contract Notification (Article 73) - 8 weeks
 - Review by DOCPER may take up to 3 weeks (5 day objective)
 - German authorities are expected to concur/non-concur in writing within 5 weeks. If no response is received within that time frame, concurrence is assumed
- Enterprise Approval (Article 72) - ~4-8 weeks, but no set timelines for GFO
- Individual Applications - 10 weeks
 - Review by DOCPER may take up to 4 weeks (5 day objective)
 - German authorities are expected to concur/non-concur in writing within 4 weeks. If no response is received within 6 weeks, DOCPER (not the COR or contractor) can assume concurrence
- Total process may take up to 18 wks for new applications, but if either DOCPER or the German authorities need further information to process the request, it could take longer than

COR Duties And Responsibilities^D

- AE Reg 715-9(4)(d). The COR will
 - 1) Ensure that contract and individual application packages are completed and submitted (through DCOPS)
 - 2) Ensure that applicants meet approved job requirements
 - 3) Prevent fraud
 - 4) Notify DOCPER and IMCOM-E (formerly 1st PERSCOM) of employee terminations (Template available in DCOPS and on the DOCPER Forms Page)
 - 5) Turn-in contractor Common Access Cards (CACs) and identification (ID) cards to local ID-card facilities after terminations
 - 6) Instruct approved contractors to accompany family members to ID card section. (Do not prepare DD Form 1172 authorizing ID cards for family members.)

COR Duties And Responsibilities (Cont.)

- For contractors, NATO SOFA status is always associated with an approved position under an approved contract. When the contractor leaves either the contract or the position under which they were approved, they have no more basis for NATO SOFA status. Their status is no longer valid and must therefore be terminated.
- The COR is responsible for informing DOCPER any time a contractor's status must be terminated for any reason: at the end of a contract, at early contract termination, when a contractor is terminated, when a job offer is declined, when a contractor transfers stateside, etc.
- The COR is given significant trust and latitude with respect to status termination, but they must expect to be held accountable.

5 COR Steps to TESA/ASSA Approval Process Overview (Steps 1&2: Phase 1)

COR Step 1: Initiate process

COR transmits signed designation letter to DOCPER.

DOCPER generates COR login & initial password Email

Phase I: Contract Approval

COR Step 2: "Complete"/Submit DCOPS Contract

COR completes online AE 715-9A, uploads docs



COR submits completed contract to

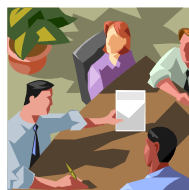
DOCPER
DOCPER returns for modification/correction
Or DOCPER notifies COR if contract rejected



DOCPER reviews contract docs:

- Approves (DOCPER approval) *
- Denies contract

Phase I done:
contract approved,
both DOCPER and
Land concurrently
approve.



Status Approved

Bilateral Approval Process

Land reviews contract docs:

- Approves (Land approval) or
- Denies contract

DOCPER notifies COR of approval to proceed

* Applications accepted upon "DOCPER Approved"

Phase II: Individual Application Approval

5 COR Steps to TESA/ASSA Approval Process Overview (Steps 3,4,&5: Phase 2)

COR Step 3: Generate the Applicant

**COR "generates" applicant's DCOPS
login ID**

COR Step 4: "Complete" application



COR notifies Applicant to complete application

Applicant submits completed application to COR



Applicant completes
online AE FORM 715-9C
& uploads documents

COR submits completed application to
DOC PER

COR Step 5: Submit DCOPS Application



DOC PER returns for modification/correction
Or DOC PER notifies COR if status denied



DOC PER reviews application:
- Approves (DOC PER
approval)
- Denies applicant
accreditation
**Bilateral Approval
Process**

**Phase II done:
Individual
Application
Status accreditation
approved
DOC PER issues
1172-2**



Status Approved



Land reviews application:
- Approves (Land approval)
or
- Denies applicant
accreditation

Contract Notification

- Request DCOPS access with your COR designation memo:
- Provide contract information through DCOPS
- Upload the executed (signed) contract document
- Upload subcontract documentation if subs are involved and require approval under Article 73 (Technical Experts)
- Upload PWS or SOW
- Upload job description(s) which articulate duties and minimum education/experience requirements.
- Upload COR designation memo, as signed by the contracting officer
- Upload the Detainee Memo for any contract requiring approval under Article 72

AS
Subcontracts
covered later...

Application^D Packages

- Generate Applicant Login and have applicant complete all required data entry
- Applicant must print and sign the AE Form 715-9C. Applicant should then scan and upload the signed application.
- Applicant should upload their resume (month/year and duty location for each previous position, active duty and/or civil service clearly articulated). The resume does not need to be signed
- Applicant should upload their offer letter (signed by employee and company rep) or a letter of employment verification
- **COR uploads** the approved job description

Any changes to information in the application package that might impact accreditation or taxation require a fresh applicant signature

DD 1172-2s

- Only DD 1172-2s authorized/ verified by DOCPER are valid for use in Germany and Italy by contractors for ILS purposes. CVS does not eliminate the requirement for a valid 1172-2
- DOCPER generates and provides DD 1172-2s thru the DCOPS system
- Expiration dates on 1172-2's are generally 3 years from the date of issue or at the expiration of the contract, whichever is earlier:
 - Even for immediate status on the basis of military exigency (ME)
 - Even for conditional status (pending receipt of German address)
 - DOCPER reserves the right to deviate from this policy when necessary
- DOCPER reserves the right to hold one applicant per contract as a "hostage"
- CIV-GC only when the SOW indicates that the specific position is emergency essential/mission critical
- A DD 1172-2 is generally not required for a contracted employee to receive a non-privileged CAC, but verification in CVS is always required



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AE Forms^D 600-77A

- A valid AE Form 600-77A is required in order for an approved contractor and their dependents to receive NATO SOFA certificates
- NATO SOFA certificates are the only true credential for NATO SOFA status for individuals not in possession of an official passport
- The NATO SOFA certificate is not an optional document
- Only DOCPER can authorize the issuance of NATO SOFA certificates for contractors approved under Articles 72 and 73
- DOCPER generates and provides AE Forms 600-77A thru the DCOPS system
- Expiration dates on AE Forms 600-77A will match the expiration date of the 1172-2's provided by DOCPER
- Approved contractors should receive their privileged CACs first, prior to seeking to obtain their NATO SOFA certificates
- The NATO SOFA certificate is not an optional document

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“New”^D Contracts

How does one know when a contract providing the same services as previously approved is “New” vs. being an “Extension?”

- When possible, it is preferred to have a contract extended, rather than to process a contract as new
 - “Extensions” do not require new contract notification/approval
 - “Extensions” do not require applicants to reapply
- An “Extension” must meet **ALL** of the following criteria:
 - Same contract number (order numbers may change)
 - Level and scope of work must remain unchanged
 - Same PWS, same services
 - Number, type and location of positions do not change
 - Old and new POP should be basically sequential – no gaps and no overlap

Military Exigency (ME)^D

- The exchange of notes allows for the US forces to grant immediate, temporary, unilateral status when a military exigency exists. Previous policy attempted to minimize the use of ME requests. This is no longer the case
- Written requests are not required, but requests must come from the COR
- Only DOCPER has the authority to approve an ME request
- DOCPER will only approve MEs for strong candidates in strong positions
- DOCPER may deny an ME request when deemed prudent
- MEs can be approved for:
 - TE applicants anytime following unilateral (DOCPER) contract approval
 - AS applicants anytime following bilateral (DOCPER and GFO) approval
- TC and TC-IT applicants are not eligible for ME

Temporary Duty in Germany

- “FAX Back” *
 - Required by German law
 - Does NOT provide status or any ILS
 - ≤ 90 days per calendar year
 - Between contractor and German govt
 - DOCPER provides information, but does not process

*NOTE: “Fax-back” is now done via e-mail
- TESA TDY
 - Does provide full ILS while on TDY
 - ≤ 90 days per calendar year
 - Must apply to DOCPER; applicant must qualify for approved position on an approved contract and not be Ordinarily Resident
 - TESA TDY contractors must receive a privileged CAC specifically associated with their TESA TDY approval.

Ordinarily Resident (OR)^D

- Established special criteria for determining OR under Art. 73
 - **Duration in FRG w/o status**
 - **Work in FRG w/o status**
 - **Real property ownership**
 - **Receipt of social benefits**
 - **Children in Germany/school**
 - **Other sources of income**
 - **Main focus of societal relations**
 - **Spouse employment**
 - **German spouse**
- Test: weigh the *totality of the circumstances*, ascertain whether individual has shifted main focus of vital interests from another nation to the Federal Republic of Germany
- *Stereotypical* OR contractor employee: lived in Germany for long time; German spouse; children attend German school; spouse and/or children receive or have received social benefits; and spouse works on the economy

Applicants determined to be OR are ineligible for status

^D “Yellow-Card” Approval

- “Yellow-Card” or “Last Chance” approval means that the individual receives status this last time with the understanding that if they apply again, they will likely be denied
- This only happens when a person is essentially ordinarily resident now, but has been previously approved
- “Yellow-Card” approval is a decision made by the German authorities, not by DOCPER
- “Yellow-Card” approval allows an individual sufficient time to either make a graceful exit or to transition to full German residency
- A “Yellow-Card” approval does not change the status of the applicant, and thus is not subject to challenge by DOCPER. Applicants who choose to re-apply after receiving a “Yellow-Card” approval must support their application with facts that indicate that the applicant’s “main focus of vital interests” is

Subcontractors

- Technical Expert positions
 - Information regarding the sub-vendor must be included on Contract Notification Form (para 1.c) by entry in DCOPS
 - Applicants apply and are treated as if employees of the prime-vendor
- Analytical Support positions
 - Each sub-vendor requires individual enterprise approval as if they were a separate prime-vendor
 - The prime-vendor must provide a Prime-Sub Agreement
 - The COR must submit a separate “Detainee Memo”
 - Applicants can only apply for AS positions specifically approved for their company
 - Sub-vendors must only provide a “small” number of total employees supporting the contract effort
- TC and TC-IT positions will not be approved if they are subcontracted

D Integrity

- Integrity of CORs and PMs are key to integrity of overall implementation of bilateral agreements
- Contract notifications and applications require full disclosure of all information requested
- Falsification or non-disclosure not only casts a very negative picture of the United States, but can also lead to CID involvement...
- Current system relies largely on trust, and we want to keep it that way